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September 12, 2012

BY EMAIL pubcomment-ees.enrd@usdoj.gov and U.S. MAIL

Assistant Attorney General
Environment and Natural Resources Division
P.O. Box 7611
U.S. Department of Justice
Washington, DC 20044-7611

Re: *United States v. Northern States Power Company*
Case No. 3:12-CV-00565 (W.D. Wis.)
D.J. Ref. No. 90-11-2-08879

This correspondence is presented on behalf of the City of Ashland, Wisconsin ("City") about the consent decree ("CD") between the United States, Wisconsin, Northern States Power Company ("NSP"), and the Bad River and Red Cliff bands of the Lake Superior Tribe of Chippewa Indians. The City is happy to see that remediation of the site will begin and does not object to the U.S., Wisconsin and the tribes entering into a consent decree with NSP. The City does, however, have some comments about the terms of the CD. Those comments follow.

1. The City understands that NSP is exempt from the need to obtain local permits for work on the site. However, the CD should include a requirement that any buildings or structures which will remain on the site after the soil removal and capping, especially those within the area referred to in the CD as Kreher Park, should be required to comply with City and State design requirements or similar

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September 12, 2012

Page 2

standards as to appearance and quality of construction. The site is located on the lake shore, which is an attraction for the public and an amenity for the City. Kreher Park will be open to the public for access to the lake, enjoyment of its natural beauty, and other public uses. For both safety and esthetic reasons, it is important that sufficient design standards be applied to buildings and structures which will remain on the site.

2. It is in the public interest to maximize the availability of Kreher Park for public use, including enjoyment of the lake shore. Hence, the CD should require that buildings and structures be located on NSP property rather than in Kreher Park, to the extent that is reasonable and consistent with the remediation that needs to be accomplished.
3. Section 108 of the CD protects de micromis parties from suits by NSP. Section 109 prevents certain parties, including the City, from taking advantage of that protection. In fairness to those parties, they should also be protected if they qualify as de micromis parties. In any event, Section 109 should make clear that it cannot prohibit the EPA from providing such parties with protection as de minimis or de micromis parties in accordance with CERCLA §§ 107(o) and 122(g), (42 U.S.C. §§ 9607(o) and 9622(g)).

Thank you for your attention to these comments.

Very truly yours,



Richard C. Yde

RCY:kps